

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8922 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHABBIR AHMADBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Mr. S.R. Divetia, AGP for Respondent.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 11/02/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner who is the detenue, calls in question the legality and validity of the detention order, passed by the Commissioner of Police, Baroda City on 31st October 1997 invoking his powers under Sec. 3 (2) of the Gujarat Prevention of Anti-Social Activities Act (for short 'the Act'); consequent upon which the petitioner came to be arrested, and at present is under detention.

2. In order to appreciate the rival contentions, necessary facts may be stated. The petitioner is alleged to be the bootlegger and he deals in liquor in huge quantity. The Commissioner of Police found that he was often disturbing the public order and harassing the people so as to carry out his bootlegging activities smoothly and conveniently. When the Police Commissioner checked the record, he could know that about 3 complaints relating to the offences punishable under Section 66 (1)(b) & 65-E of the Bombay Prohibition Act were filed with Sayajiganj police station, Baroda. After such complaints and allegations made therein, the Commissioner of Police inquired in details. He could note that the petitioner was having evil-repute owing to his bootlegging activities, subversive in nature, disturbing the public order and terrorising the people he was often causing the people to scamper. He was satisfied after studying the papers and the facts placed before him that the petitioner was a headstrong person i.e. a tartar & decimator and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities, disturbing public order, were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuasion and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. He, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested and at present, he is in custody.

3. On behalf of the petitioner, challenging the impugned order, it is submitted that the order in question is passed after a great delay, as a result, the continuous detention has been rendered illegal. There was no justification for the authority passing the detention order withholding particulars. exercising the privilege under Sec.9(2) of the Act. The detaining authority ought to have disclosed the particulars of the witnesses whose statements were recorded in support of the order passed. No doubt, under Section 9 of the Act, the authority has the privilege, but that is to be

exercised judiciously, and not arbitrarily or capriciously so as to deprive the detenu of his right to have effective representation. As the particulars were not given, the petitioner was deprived of his right to have the effective representation against the order. The instances about the offences noted in the order were not sufficient to brand him a dangerous person or to form a reasonable belief that maintenance of public order was adversely affected. The statements recorded are vague and necessary particulars wanting, the order is bad in law and is liable to be quashed.

4. Mr. S.R. Divetia, learned AGP has vehemently refuted the allegations made in the petition submitting that there was no delay on the part of the authority passing the order, the same was passed promptly, and certain particulars were withheld in the public interest. He also submitted that the nature of the complaints alleged against the petitioner would show that he is a dangerous person and the action taken against him is quite just and proper.

5. At the time of hearing, both confined to the only ground namely whether petitioner can be branded 'dangerous person' so far as maintenance of public order is concerned. I will therefore confine to the only point on which both have submitted and would not dwell upon other points pleaded in the petition.

6. It may be stated that even if it presumed on the aforesaid fact that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act, he cannot be preventively detained under the provisions of the Act unless as made clear in Section 3 (4) of the Act that his activities as a bootlegger affected adversely or likely to affect adversely the maintenance of public order. A person may be very fierce by nature, but so long as public generally are not affected by his activities or conduct, the question of public order will not arise. In order to bring the case within the four corners of the Act so far as maintenance of public order is concerned, there must be material to show that there has been a feeling of insecurity amongst the general public. If any act of the person creates panic or fear in the mind of the members of the public upsetting the tempo of life of the community such act must be said to have direct bearing on the question of maintenance of public order. The commission of the offence simpliciter will not necessarily come within the purview of "public order".

7. What transpires perusing the order of detention

is that the petitioner at times used force so as to have easy sale of liquor or might have once or twice beaten some one coming in his way. Such minor incidents of beating or using force will not cause terror to the public of the concerned area and no one because of minor incident would feel frightened or insecured. In short, even if some of the incidents mentioned in the detention order are accepted, the same would not amount to creating insecurity or panic in general public and that would not disturb the public order or thereby maintenance of public order cannot be said to have become difficult. Consequently, the order in question cannot be maintained. For my such view, a reference of a case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City & Anr. - AIR 1989 S.C. 491 may be made.

8. For the aforesaid reasons, the bootlegging activity of the petitioner cannot be held to be disturbing the maintenance of public order. He can well be dealt with under the general law. Consequently, the order of detention is not just and proper in the eye of law. The same being illegal is required to be quashed. In the result, this application is allowed. The order of detention dated 31st October 1997 is hereby quashed and set aside. The petitioner is ordered to be set at liberty forthwith if no longer required in any other case. Rule accordingly made absolute.

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*RMR.